

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).  
Dated: July 21, 2009  
Electronic Signature for Brian R. Tomkins: /Brian R. Tomkins/

Docket No.: SPINE 3.0-437 CIPCIPCIPCIPCIP CON XV  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Letters Patent of:  
Errico et al.

Patent No.: 7,223,290

Issued: May 29, 2007

For: AXIALLY COMPRESSIBLE ARTIFICIAL  
INTERVERTEBRAL DISC HAVING A  
CAPTURED BALL AND SOCKET JOINT  
WITH A SOLID BALL AND  
COMPRESSION LOCKING POST

**RENEWED PETITION UNDER 37 C.F.R. § 1.78(A)(3)**  
**TO CORRECT PRIORITY INFORMATION**

MS Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

**I. SUMMARY**

This renewed petition is in response to the Decision Dismissing Petition issued on April 15, 2009. The original petition submitted on February 2, 2009 was to correct the priority information in U.S. Patent 7,223,290 ("the '290 patent"). In particular, the *relationship* information, in the original filing on August 15, 2003, for the applications from which benefit is claimed is believed to be incorrect and thus correction was sought. The petition fee set forth in 37 C.F.R. § 1.17(t) of \$1,410.00 was provided on February 2, 2009.

Petitioner submits that the Domestic Priority Data as stated in the Filing Receipt (mailed November 12, 2003) is incorrect. Petitioner requests that the Domestic Priority Data be revised as shown in the Request for Certificate of Correction

originally filed on February 2, 2009. Any delay by Petitioner in submitting the correct priority data to the U.S. Patent & Trademark Office ("USPTO"), from the time the claim was due to the date the claim was filed, was unintentional.

## **II. FACTS**

A statement of domestic priority data, on the first page of the specification of the '290 patent, filed August 15, 2003, included a claim for priority under 35 U.S.C. §120. No Application Data Sheet was filed with the application.

Subsequent to the filing of the '290 patent, the '290 patent, along with all the related files, were transferred as just one part of a sizeable patent portfolio, to the law firm of Lerner, David, Littenberg, Krumholz and Mentlik, LLP ("Lerner, David"). A revocation and substitution of attorneys was executed by the assignee and received by the USPTO on January 24, 2005. A Notice of Acceptance of Power of Attorney was mailed on February 14, 2005 by the USPTO.

After the transfer of files, the prosecuting attorney at Lerner David recognized that the domestic priority information in the '290 patent was incorrect. The prosecuting attorney filed an Amendment on March 22, 2006 listing incorrect domestic priority relationship information.

The prosecuting attorney incorrectly claimed priority of the present application as a continuation-in-part application of U.S. Application 10/256,160 instead of a *continuation application* of U.S. Application 10/256,160.

## **III. NATURE OF PETITION**

Petitioner respectfully submits that this petition in connection with the correction of domestic priority is not required since the corrections are being made to the relationships between the priority cases and no priority is

being added or deleted as stated in M.P.E.P. § 201.11(V)(A). The Petitioner asserts that the delay by Petitioner in submitting the correct relationship priority data to the USPTO, from the time the claim was due and the date the claim was filed, was unintentional.

For the good cause shown, it is respectfully requested that the original Petition filed on February 2, 2009 and the Renewed Petition filed today be Dismissed as Moot and the priority corrected as shown in the Request for Certificate of Correction filed on February 2, 2009, a copy of which is enclosed, and that the Patent Office issue a Certificate of Correction and a Corrected Filing Receipt.

If there are any additional charges in connection with this requested Petition, please charge Deposit Account No. 12-1095 therefor.

Dated: July 21, 2009

Respectfully submitted,

Electronic Signature:

/Brian R. Tomkins/

Brian R. Tomkins

Registration No.: 58,550

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant